

ZONING BOARD OF ADJUSTMENT PUBLIC HEARING AND MEETING
February 14, 2017

A public hearing of the Zoning Board of Adjustment was held on Tuesday, February 14, 2017 at 6:30 PM in the Auditorium, 229 Main Street, at City Hall.

Members in attendance were:

Jack Currier, Chair
JP Boucher, Vice Chair
Mariellen MacKay, Clerk
Robert Shaw
Kathy Vitale

Carter Falk, AICP, Deputy Planning Manager/Zoning

Mr. Currier explained the Board's procedures, including the points of law required for applicants to address relative to variances and special exceptions. Mr. Currier explained how testimony will be given by applicants, those speaking in favor or in opposition to each request, as stated in the Zoning Board of Adjustment (ZBA) By-laws. Mr. Currier also explained procedures involving the timing light.

- 1. Carl Roy (Owner) April Roy (Applicant) 8 Dixville Street (Sheet 53 Lot 82) requesting special exception for a major home occupation for an in-home day care for 12 children. R9 Zone, Ward 1. [Expired - approved by ZBA on 1-8-13, applicant never obtained a building permit].**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Robert Shaw
Kathy Vitale

April Roy, 8 Dixville Street, Nashua, NH. Mrs. Roy said that she came to the Board in 2013 for approval, and it was her misunderstanding that she needed a building permit afterwards. She said that she has been operating the day care, and had her license from the State. She said that she went for her re-licensing, and the State kicked it back because the Zoning approval was too old, and then realized that she had to have the Building Inspector come out and approve it. She said it was a misunderstanding on her part, she said she thought the initial

zoning approval was all she needed. She said she is just asking for the Board to re-approve the request, and nothing has changed. She said that the Board asked her to put up a fence, and that has already been done, the yard is all fenced in.

Mr. Shaw asked her if she's been operating the use.

Mrs. Roy said that she was until she received the cease of action by the State. She said that she stopped as she was technically not legal.

Mr. Shaw asked if there have been any other issues.

Mrs. Roy said it's been fine, there have been no neighbor complaints at all, and they've been very supportive, and no concerns.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Boucher to approve the special exception on behalf of the owner as advertised for the in home day care. He said that the Board finds that it is listed in the Table of Uses, Section 190-36. He said that it will not create undue traffic congestion or unduly impair pedestrian safety, as it is on a dead-end street. He said it will not overload public water, drainage or sewer or other municipal systems. He said that the special regulations are all met per testimony.

Mr. Boucher said that it will not impair the integrity or be out of character with the neighborhood or be detrimental to the health, morals or welfare of the residents.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

2. Southern New Hampshire Regional Medical Center (Owner) 24-30 Dearborn Street & 11½ Prospect Street (Sheet 18 Lots 1 & 2) requesting variance to allow a reduction in open space, 35%

required - 24% proposed, after the two lots are combined. RC Zone, Ward 4.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Kathy Vitale
Rob Shaw

Jim Petropulos, Hayner Swanson, Inc., 3 Congress Street, Nashua, NH. Mr. Petropulos said that Scott Cote is with him, he's the Vice President of the hospital. Mr. Petropulos described the site location, which is bounded by three streets, Prospect Street to the north, Dearborn Street to the west, and Bowers Street to the south, and the Community Council is next to the site.

Mr. Petropulos said that the lot contains a single-story medical office building, but the building is in disarray, it's dated, and needs to come down. He said that the abutting lot has a parking lot with 124 spaces, and the hope is to bring it together with this lot so it'll be one uniform parking lot. He said that they will be removing three curb cuts, and there will be better access management with the proposed parking lot. He said it will be nicely landscaped, new lighting and fencing.

Mr. Petropulos said that in the RC zone, there is a 35% open space requirement. He said that the lot with the building on it, "Lot 1", would have 54% open space. He said that "Lot 2", the existing parking lot, has 17% open space, which is not conforming, but as it's improved, it will have some green space added to it, and it goes to 18%, so it's coming into greater conformity. He said that the Hospital is requesting to consolidate the two properties, for ease of management and tax reasons, it's just easier to consider it as one singular lot, but together, the whole lot would have less than the 35% open space.

Mr. Shaw asked about the 54%, if it is right now, or as it will exist.

Mr. Petropulos said as it will exist. He said that the advertisement was for a 24% open space, actually, since the

application has been made, they have amended the plans, and now it will be 31% open space.

Mr. Petropulos went over the five points of law to the Boards satisfaction.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Currier to approve the variance application on behalf of the owner as advertised. Mr. Currier said that by testimony, the applicant is asking for 31% open space after the two lots are combined. He said that the Board finds the variance is needed to enable the applicant's proposed use of the property, which is a bit of a continued expansion of the hospital, in what's traditionally been an RC zone, that's been dominated by hospital activities for quite some time

Mr. Currier said that the proposed use would be within the spirit and intent of the ordinance to allow this request in the RC zone.

Mr. Currier said it will not adversely affect property values of surrounding parcels, as there was testimony that it will be rather tasteful, and it should improve property values of surrounding parcels. He said that the request is not contrary to the public interest, and that substantial justice is met.

SECONDED by Ms. Vitale.

MOTION CARRIED UNANIMOUSLY 5-0.

3. Allen C. Mello Revocable Trust (Owner) 13 Marmon Drive (Sheet A Lot 690) requesting variance to exceed maximum number of wall signs, 3 permitted, 5 proposed. HB Zone, Ward 7.

Voting on this case:

Jack Currier
JP Boucher

Mariellen MacKay
Rob Shaw
Kathy Vitale

POSTPONED TO THE FEBRUARY 28, 2017 MEETING.

- 4. John J. Flatley Company (Owner) Expose Signs & Graphics (Applicant) 15 Tara Boulevard (Sheet A Lot 995) requesting the following variances: 1) to exceed maximum ground sign area for an existing sign, 150 sq.ft permitted, 256 sq.ft granted by Zoning Board on 5-12-15, permit issued for 239 sq.ft - an additional 36 sq.ft panel proposed; and, 2) to allow proposed sign panel for an off-premise site at 200 Innovative Way for use to be determined later. PI Zone, Ward 8.**

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Kathy Vitale

Kevin Walker, John J. Flatley Company, Braintree, MA. Mr. Walker said that they are here to request a 36 square foot sign for a future restaurant under construction at 200 Innovative Way. He said that the existing Homewood Suites sign has a height of 60 feet to the top. He said that the proposed sign would be 3 feet high, by 12 feet wide, and would be about 42 feet off the ground, and 45 feet to the top.

Mr. Walker said that the restaurant site plan was presented to the Planning Board and approved, and all permits were granted, and it's currently under construction, and should be done possibly by next week. He said that the Homewood Suites sign was approved by the ZBA in May, 2015, and 256 square feet was approved, at 60 feet tall, however, it was constructed at 239 square feet, which is 17 square feet below the approved variance.

Mr. Walker said that there used to be a section in the ordinance that allowed freeway oriented signs, for signs abutting the highway. He said that the existing Radisson sign was approved without going to the Zoning Board, it was allowed as is. He

said that the Holiday Inn sign further north exceeds the height requirements also.

Mr. Walker said that the drawing indicates the 239 square foot Homewood Suite sign, along with the proposed 36 square foot restaurant sign. He said that once a restaurant is named, there will be a more specific sign placed in the box.

Mr. Shaw asked for a more specific description of the location of the restaurant.

Mr. Walker handed out a plan showing the location.

Mr. Falk said that the Board approved a special exception recently that would allow for access to the restaurant site.

Mr. Walker said that the sign will not be contrary to the public interest, as this sign would have previously been classified as a freeway oriented sign, which would have been allowed, and the restaurant is not visible from the road, and it would benefit the public. He said that the proposed sign height and size is reasonable.

Mr. Walker said that the proposed sign is to serve as an aid to motorists to locate the restaurant.

Mr. Walker said that the sign will not be out of character for the neighborhood, as the park is primarily commercial in that section, and there are residences in the far north.

Mr. Walker said that substantial justice would be done to the property owner by granting the variance, as Gateway Hills is an expanding mixed-use development, with a substantial tax base and services. He said that the sign will allow the restaurant to be advertised, and with the height and topography, will be a benefit to the applicant and would cause no harm to the public.

Mr. Walker said that the proposed sign will not diminish the values of surrounding properties, as the sign pole is existing for the Homewood Suites, and the proposed sign is much smaller, at 36 square feet versus 239 square feet. He said that there are no other businesses in the area except for the Radisson Hotel, which has a much larger sign.

Mr. Walker said that Gateway Hills is a substantial development, with limited access, and traffic is off of Spit Brook Road, and restaurants are looking for some sort of identification, where possible, to promote their business, and the essential nature of this neighborhood is business, office buildings. He said that the proposed restaurant is inside the site a little bit, and not so much on the perimeter of the site, the location of the sign will benefit the restaurant, and will be easily identifiable to folks on the highway.

Mr. Currier said one of his concerns is when a sign variance is granted, and the same property comes back, and it's more and more. He said that when the Homewood sign went in, it was the one and only freeway sign, and now more is being asked for. He asked if there is any other signage that will be asked for in the future.

Mr. Walker said that they are in the process of putting together an overall plan, and some concepts for the remaining 150 acres of land north of the apartments. He said that they're trying to get an overall site development plan together. He said at this stage, they're not anticipating another request for a sign at this location.

Mr. Currier asked if there is room for signage at Innovative Way, he said that would be a better place to have a sign than the highway.

Mr. Walker said that they're looking at areas within the site, and there's not a whole lot of room on Spit Brook Road at this point.

SPEAKING IN FAVOR:

Andrew Clark, Expose Signs & Graphics, Hopedale MA. Mr. Clark said that once you come into Innovative Way, there is a small park directory there, and there will be a listing with the restaurant in there, and there are some other directional signs within the park to bring you up to the site. He said that there is nothing visible from Spit Brook Road or the highway.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

Ms. Vitale said that this is somewhat unusual, that the sign for Homewood Suites would have a sign for a building at another location. She said she understands the reason behind it, it does draw attention that the restaurant is in the general area.

Mr. Shaw said he's not seeing support for it. He said the sign is fairly large, probably larger than it needs to be. He said he's concerned about the clutter, and didn't hear the justification for this. He said that he's concerned that this may not be the last application we see for this sign. He said he's concerned about the ground sign at the entrance to the property, that the site where this sign should be happening for direction. He said that there is reasonable justification for the Homewood Suites sign at the Homewood Suites property, and part of the argument was that there was no way to identifying it down at Spit Brook, so the highway sign at the building gave reference to the site. He said that the proposed sign is more distraction to the sign, and did not see any sufficient justification for the off-premises sign.

Mr. Boucher said that he's struggling with the request as well, especially since there isn't a direct relationship between the sign post and the restaurant location. He said an argument could be made if the restaurant was in the hotel. He said that he thinks that there is another way to do this, and doesn't find support for it at this time.

Mrs. MacKay said that she understands the logic, and the second bite of the apple could increase to five bites of the apple, but thinks about Cotton Restaurant in Manchester, but without that sign, you'd never know how to get there. She said she could support the sign.

Mr. Currier said that he's struggling to find support for the sign. He said that the Homewood Suites sign is big, and the Lowe's sign is also big. He said he has a bad taste about the size of these highway signs. He said that the whole area is marketed as the Nashua Technology Park. He said he's uncomfortable with another bite of the apple. He said he'd need to be convinced to be favorable at this point.

Mr. Shaw said that there are two requests here, we have the area variance and the off-premises sign, so, there are different arguments for each one. He said that there is some argument there for the off-premise sign, but would not approve the area

variance, but might be open to approving the off-premises variance, but the only way he said he'd see that working is they can find a way to reconfigure the Homewood Suites sign, maybe if the Homewood Suites sign has less area, and the restaurant gets a lower banner portion on it.

Mr. Boucher agreed. He said he'd support the second part of the variance, and if they had a feasible solution for the area portion of the sign. He said that the square footage could be reconfigured in some way.

Mr. Shaw said that perhaps the Board can address the applicant to see if they would consider something like what we've been discussing

Ms. Vitale said the Homewood Suite sign tells her that the hotel is right there, but the restaurant is in a different location, granted, it would get you into the area, but they're going to have to come up with a way to let drivers know how to get there. She said she doesn't see a reason to have a sign at the hotel location for every business in the park.

MOTION by Mr. Currier to suspend the rules and re-open the public hearing for the applicant to speak specifically about whether there could be some modification to the application, possibly to get to a table of the case.

Mr. Currier said it would be a narrow discussion, as the Board is not finding support for the application, and if the applicant is interested in making adjustments to the sign.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0

Mr. Currier said that the Board is looking for some major modification to the plan tonight. He asked if the applicant would be interested in tabling the case to readjust it.

Mr. Walker said he'd appreciate the opportunity from the Board, and it's an option that they'll take advantage of. He said that they've already received a variance for 256 square feet, so, is what the Board is saying is that we can have two signs, but the total has to be under 256 square feet.

Mr. Currier said that the permit has been issued for 239 square feet, and there has been a lot of discussion here that that sign is largely adequate for what it does, so he said he sees the stake in the ground for 239 square feet, and not 256 square feet.

Mr. Boucher asked if the Board was comfortable with two different boxes, or does it really matter as long as it's the same square footage.

Mr. Shaw said he was looking at one box, whether there was a black banner between the two portions, or a single box.

Mr. Currier echoed that sentiment, and said that Mrs. MacKay is nodding. He said if the case is tabled, the Board would want to table it to a date certain.

Mr. Walker suggested the first meeting in March, which is March 14th.

Mr. Currier agreed.

MOTION by Mr. Currier to table the request to the March 14, 2017 meeting, based on the discussion the Board just had, that the Board was uncomfortable with the totality of the plan that was presented to the Board tonight, and the applicant is going to see if he can address the Board's concern.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

5. Sequel Development & Management, LLC (Owner) 7 Deerwood Drive (Sheet H Lot 133) requesting use variance to construct 8 multi-family dwelling units. PI/GB Zone, Ward 2.

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Kathy Vitale

Peter Dolloff, Sequel Development & Management, 2 Knightsbridge Road, Nashua, NH. Mr. Dolloff said that the lot is a split-zoned lot, being 60% Park Industrial and 40% General Business. He said that Deerwood Drive itself is mostly Park Industrial. He said that many years ago, Deerwood Drive morphed into a residential neighborhood, and now it's made up of several multi-family properties, single-family homes, and two auto repair shops.

Mr. Dolloff said that they are proposing to put in mirrors what is under construction next door two years ago, it is 14 townhomes, and it's almost completed, and it seems to fit in really nicely into the neighborhood, and it's been well-received.

Mr. Dolloff said that they are proposing 8 multi-family units, and all the setbacks and parking are met. He said that they will have three parking spaces per unit, where two are required. He said it will be substantially landscaped, and right now it's an overgrown abandoned lot, so it will look nice and fit into the character of the neighborhood. He said that there is another access into the Bank of America parking lot, so emergency vehicles can have an extra access point.

Mr. Currier asked about the portion of the lot that says it is reserved for drainage.

Mr. Dolloff said that it will be green space, lawn. He said that they will have some sort of an infiltration basin, it'll be under the ground, a giant pipe where water will flow, as all the stormwater must be handled on site. He said if you're looking at it, it will just look like lawn area.

SPEAKING IN FAVOR:

No one.

SPEAKING IN OPPOSITION OR WITH QUESTIONS OR CONCERNS:

No one.

MOTION by Mr. Boucher to approve the variance application on behalf of the owner as advertised. Mr. Boucher said that the variance is needed to enable the applicant's use of the property, given the special conditions of the property, which is

that it's been an abandoned lot for a long time, and there is also evidence of the applicant improving other lots on the street with proven success.

Mr. Boucher said that the proposed use would be within the spirit and intent of the ordinance.

Mr. Boucher said it will not adversely affect property values of surrounding parcels, as there was no testimony one way or another. He said that the request is not contrary to the public interest, and that substantial justice is met.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

6. Gary Wingate, 15 Sherman Street (Sheet 59 Lot 154); Michael Zagrodny, 11 Danbury Road (Sheet 137 Lot 145); Samuel Kouchalakos, 9 Danbury Road (Sheet 137 Lot 137), and John Bianchi, 7 Danbury Road (Sheet 137 Lot 153), appealing the decision of the administrative officer that a proposed elderly housing development located at 122 Manchester Street (Sheet 59 Lot 135) will provide significant facilities and services designed to meet the physical and social needs of older persons. RA Zone, Ward 2. [TABLED FROM 1-24-17 MEETING]

Voting on this case:

Jack Currier
JP Boucher
Mariellen MacKay
Rob Shaw
Kathy Vitale

Mr. Currier reiterated what the appeal is about. He suggested that the Board start off with the six categories, in Section 190-42.

Mr. Shaw said that the Board did get one correspondence that was technically after the public hearing, but it was just a summarization of Attorney Sokul's testimony last night, and said that there wasn't any new information in there, it was just a summary of his presentation.

Mr. Falk said that staff received it early in the morning after the meeting, and he thought it was just a write-up of his presentation. He said that he didn't have copies to distribute to the Board at the meeting, and he just emailed it to staff the next morning, that's the reason why staff forwarded it to the Board.

Mr. Shaw agreed with Mr. Falk's reasoning.

Mr. Currier agreed, and didn't see it as any new information, it was just an encapsulation of the presentation. He said it was just a summary, and there is no new information in there.

Ms. Vitale said she didn't see anything that was new.

Mr. Boucher agreed.

Mr. Currier said that they're looking at the Land Use Code, Section 190-42, paragraph A 2, which is the six criteria are on the following page, the first one is assisted living services, the second one is life care or continuing care services, the third is community care facilities for the elderly, the fourth is continuing care retirement communities, the fifth is skilled nursing or nursing care facilities, and number six is homes for the elderly. He said he's fine with going over each of these and see if they fit in.

Mr. Falk said the list actually starts on the previous page, the first one is actually congregate living services, so there are actually seven categories.

Mr. Currier said the page before does list congregate living services. He said that one has to do with federal subsidized housing, and didn't think the applicant was questioning that one specifically. He said that the Board will start with congregate living services.

Mr. Shaw said it's all described in Tab 6, just a couple pages in, page 17 of 57.

Mr. Currier asked if any of the Board members feels that this one meets the congregate living services.

Mr. Currier said he sees some heads shaking "no". He said this one isn't applicable to this application, it's not a low income federally subsidized housing.

Mr. Currier said the next one is assisted living services. He said that these services are provided by board and care establishments such as adult foster care homes and adult care group homes, services include daily activity assistance such as dressing, bathing, and these establishments may be located in single family homes, and share the house with the care providers family.

Mr. Currier said that the third one is life care or continuing care services, the subcategory comprises church or social welfare organizations running retirement centers, where residents turn over some/all of their assets in exchange for housing, personal care, convenience care and some health care, terms used for such establishments are endowment facilities, founders care facilities, etc.

Mr. Currier said that the next one is community care facilities for the elderly, and these establishments are primarily engaged in providing residential and personal care services for the elderly who are unable to fully care for themselves, and for the elderly who do not desire to live independently, the care typically includes room and board, supervision and assistance in daily living such as housekeeping services, and in some instances these establishments provide skilled nursing care for residents in separate on-site facilities.

Ms. Vitale said it doesn't meet it, no.

Mr. Currier said a key thing on this is the housekeeping services, the daily living, the room and board, those are much more intensive than what the proposal is here, and the housekeeping is kind of like an indoor thing, so he stated that it doesn't apply to that one.

Mr. Currier said the next one is continuing care retirement communities, these establishments primarily engage in providing a range of residential and personal care services, with on-site nursing care facilities for the elderly and other persons who are unable to fully care for themselves, and/or the elderly and other persons who do not desire to live independently, individuals live in a variety of residential settings with

meals, housekeeping, social, leisure and other services available to assist residents in daily living, assisted living facilities with on-site nursing care facilities are included in this industry.

Mr. Currier said he's seeing two "no's". Three "no's".

Mr. Currier said that the next category is skilled nursing services or nursing care facilities, this sub-category comprises establishments that provide 24-hour skilled nursing care, included are nursing homes and convalescent hospitals for the elderly.

Mr. Currier said he's feeling no.

Mr. Currier said the final one is homes for the elderly, this U.S. industry comprises establishments primarily engaged in providing residential and personal care services, i.e. without on-site nursing care facilities for the elderly or persons who are unable to fully care for themselves, and/or the elderly or other persons who do not desire to live independently, the care typically includes room and board, supervision, assistance in daily living such as housekeeping services, and these establishments may include assisted living facilities without on-site nursing facilities, homes for the aged without nursing care, homes for the elderly without nursing care, old age homes without nursing care, old soldiers homes without nursing care, rest homes without nursing care, retirement homes without nursing care, and senior citizens homes without nursing care.

Mr. Currier asked about thoughts on that.

Mr. Shaw said the question for him comes down to the care typically includes room and board, supervision, and assistance in daily living, such as housekeeping services.

Mr. Currier agreed, he said the Board can start to, typically, what is meant by typically.

Mr. Shaw said that there is a vagueness to that, but that's the most questionable thing to him in satisfying that category.

Ms. Vitale agreed.

Mr. Currier agreed also, he said that he thinks he's sensing that the other ones are not, but this is the area that there might be satisfaction to in the application, perhaps. He said he struggled as well with the typically includes room and board and supervision himself.

Ms. Vitale said she looked at the first part of that, she said in number one, the elderly or persons who are unable to fully care for themselves.

Mr. Shaw said its really and/or, so only one of those or both of those, the elderly or other persons who do not desire to live independently. He said he didn't think the first part is satisfied, but thinks the second part is where the question, that's part of the question, the next part of the question, he said he didn't think this proposal is trying to take care of elderly persons who are unable to care for themselves, he said he thinks they're saying it's for the elderly or other persons who do not desire to live independently, however, he said he's not sure that what he seems to recall from the proposal was, more of elderly housing that's meant for very independent living, so to expand what he's concerned about meeting the criteria here, it is if this is intended for those that aren't interested in living independently, and is there going to be the care that's provided that addresses that, because that's what that statement is alluding to, either they can't fully care for themselves, or they don't want to live independently, and there would be care services provided at some level, specifically, to those conditions.

Ms. Vitale said all she can do is use her own experience with her old relatives. She said for her mother, who just sold her house and went into a multi-purpose, she's in an area where she has her own apartment, she gets housekeeping services regularly, it's part of living there, she gets staff that is on-call, they will show up. She said that she gets repairs, it's all included. She said that there is food on-site, there are activities galore on-site, they take them places, there's scheduled things that they can sign up for, there are rooms they can use, pools, exercise areas, the whole works. She said granted, this is meant to be like that completely, but said if she looks at where her grandmother going into it, it'd be a completely different situation, she couldn't care for herself, that was small apartments, someone lived on-site, they had a meeting area, there were things to do. She said this doesn't

come close to her mother's, it may be more like her grandmother's place, which is an older way of doing things, she said she'd look at it as more of because you can no longer be in your house, and afford your house, so you have like a one-bedroom apartment that the people can see each other from their front door, and talk and say hi.

Mr. Currier said he's seen those type of facilities to visit some friends in those. He said he didn't think that this is a proposal for that, and he said he didn't think they were claiming it to be at that level, he said he thinks what the Board is struggling with is it at a level that meets this criteria in general.

Ms. Vitale said she's trying to place what she knows into does it meet the criteria, does it meet the criteria.

Mr. Currier said the elderly or other persons who are unable to fully care for themselves and or the elderly or other persons who do not desire to live independently.

Mrs. MacKay said to her, it doesn't meet this criteria. She said like what Ms. Vitale described, where her mom would go, she went to her husband's family, and it just doesn't have the same thing, what we heard, what we were told, and what this says, seems to be very different, having a room, a community room, where somebody could go and have recreation, like a tv room, but you'd have to be awfully independent and be able to navigate and be cognitively aware of what was going on to be able to partake in that, and this doesn't, it just doesn't meet it. She said that this requires more, and doesn't think that this proposal, she said she didn't think that the bar is high enough, the bar is set at a certain level, and said she honestly didn't think it was being met. She said that typical care, typical care means average, it means it's SOP, standard operating procedure, it's room and board, it is supervision, assistance in daily living, such as housekeeping, but none of that is going to be there, in close or in proximity to, is not hands on, and didn't see a correlation.

Mr. Currier said that there were quite a few topics that were discussed at the last meeting when there was the public hearing. He said he wanted to make sure that the Board touches on all of those here in the discussion tonight. He said that one of those was the development/re-development question or conundrum. He

said that the other one was the Stinson Park Hayden Green, which was taken that there was some analogous elderly housing this is being offered more, so he wanted that in the Board's discussion tonight, and maybe we can pick that up in the discussion tonight, about the development/re-development forum, that's kind of important. Mr. Currier said that the Code says that the provisions of this division shall only apply to projects consisting of more than 30 units in the case of new development, and more than 10 units in the case of re-development of sites which have not received a site or subdivision plan approval in the previous 5 years.

Mr. Currier said that one of the point-counterpoints the Board heard was that this was defined as a new development, or is it re-development.

Mrs. MacKay said it's confusing, because when she looks at the property, she sees the front piece of the property, with a small structure, and you want to take that down and put up six. She said in her head, that she doesn't understand how that means it's re-development, you're going to develop three-quarters of a site that only one-quarter is developed now.

Mr. Shaw said it really comes down to the technicality of it. He said if it only has to have been that there was something that was developed on that piece of land, regardless of to what extent, that that automatically means that it's redevelopment, even though, and he said that if we look at the scope and scale and say that it's even more than that percentage, it has all the feel of re-development, but because it's still on this one piece of property that had some development originally, it seems that it could be that the technicality is that it's still re-development, and that's the kind of legal question that we've heard both arguments from the attorney's last time, so, he said he's still not really sure, because what it feel like to him, he agrees with Mrs. MacKay, but there may be some technicality there in that if there was some development there, it's automatically re-development, regardless of even if it was 1% of the property and the other 99% was undeveloped. He said that's part of the struggle for him, there was conflicting testimony.

Ms. Vitale said in this case, she's looking at it as new development. She said she looks at re-development as having, if that existing structure is being used, they could redevelop and build a new house, but they have to use part of that existing

structure in the new building, and she said she looks at this as new development, that's not the intent.

Mr. Falk said that regardless of what the Board thinks of the issue of the new development vs. re-development, that is not part of the appeal.

Mr. Currier said he looked up the definition of re-development in the paper dictionary, and it says two definitions, one is to develop something again, the other is to restore to a better condition.

Mr. Currier said the other discussion was the Stinson Park and Hayden Green properties.

Mr. Shaw took it as those are other projects that might have been errors in the way those were judged, and didn't know if the Board can go back and look at those, or if we might not question the validity of those as mentioned to the criteria that was in place at the time, but said he doesn't see a lot of compelling need to consider those cases, he said he feels like there's enough, there's quite a few differences in terms of the circumstances, also of those properties, their situations, proximity to abutters, etc. so he said he's not seeing that there is a lot of reason to consider what was or wasn't done, he said that they were judged or not judged.

Mr. Currier said that he's in agreement that those are separate projects, and felt that they were from the testimony, he said he felt that under the argument that these two are pretty new, they offer a lot less than what we're offering, and they kind of clicked under elderly housing. He said that they're two separate projects, and if he were considering those for elderly housing, he thinks that they offer less, much less to that definition than what this project does. He said that he doesn't think that the Board should take that into consideration if those projects had whatever density bonuses, etc., he didn't see it as a reason for him to have this one consider that, he said he looks at those separately from this one, and if those had benefits from the definition of elderly housing, maybe they were overlooked, or a mistake was made or whatever, but isn't bringing it into consideration for this project.

Mr. Shaw said that if the Board was looking at a project right down the road on Manchester Street, or in the immediate

neighborhood, and had much more or truly similar circumstances, he said it might be more reason to consider it, but even that, he's still not sure it would be sufficient, but there are too many differences already.

Mr. Currier said that another point of the appeal is the one lot, or one structure. He said it would boil down to paragraph (B)(1), which says that elderly housing that contains duplex or multi-family dwellings, is permitted as of right in the RA, RB, RC zones, subject to the requirements of this section; elderly housing in the form of single-family detached dwellings are permitted in the R40, R30, R18 and R9, RA, RB zoning districts. He said that what's before the Board is the argument, well, Mr. Falk and company has said that more than one principal structure is permitted, the appellants are saying no, that's incorrect.

Mr. Currier said that if this proposal meets the definition of elderly housing, he believes that there would be more than one principal structure permitted, but only if it meets the definition of elderly housing, it has to meet that for more than one principal structure to be permitted, that's how he interprets it.

Mr. Shaw said that he came up with a similar judgement on that.

Mr. Currier said that where the Board is at is backing up to this first thing the Board talked about, is the definition, this final category, to meet this test for elderly housing. He said that's the most important point here.

Mrs. MacKay agreed, it doesn't meet elderly housing, and anything else is moot, it doesn't matter, we have to go through the first hurdle first, and that's where she stopped, because in her humble opinion, it doesn't meet the criteria.

Mr. Shaw said that the Board should touch on the fact that there was a lot of discussion as well, and a lot of questions on the applicability of the State and Federal laws that have evolved and changed, and some of the references back from our Code to the RSA, and it references back to the Federal and State and so, part of the argument had been essentially that a lot of this criteria in our Code is actually moot and that this newer state code that's removed all that categorization pretty much now just kind of speaks to a much broader kind of definition, basically this statement, existence of significant facilities and

services, specifically designed to meet the physical or social needs of older persons, or if the provisions of such facilities and services not practical, that such housing is necessary to provide important housing opportunities for elder persons, that's in section 4 of the State code. He said that we are kind of being told we should consider that that change since we reference to the RSA that calls into question this categorization, so we just actually spent the first part of our time tonight, so, he didn't know if anyone has come to anything definitive in terms of their understanding of how these all play together, or don't play together, and what we're really left with as our criteria.

Mr. Currier said he's put thought into that, and said that the Board can look at and slice it two ways, one way is that if there are local codes that are more restrictive, we should be abiding by the local codes, that general rule pushes us more towards Nashua codes, however, the Nashua code also refers to the State codes, and the State codes refer to the Federal code, and in Tab 3, the Federal code of 1995 does a very quantified analysis of it, most of which is kind of fascinatingly summarized at the end, the housing for older persons self-certification, where there is a check-box sort of thing, so, he said he spent quite a bit of time looking at what is offered in our package here for this proposal, and said how many Federal ones, because that's the real quantification here, and this is in Tab 3, the second page on the left-most column at the bottom, it states housing provider provides significant facilities and services if it makes available directly or indirectly at least two facilities or services, and at least five categories described in paragraph D of this section, and then there are 12 categories, he said he'd take what's here and would package them and see if it meets the test. He said he came up meeting category one, but not two or three, or four. He said if you take this criteria of at least two facilities or services and at least five categories, he said he wasn't exceeding that threshold in the way he translated what was offered in this package back to these Federal guidelines, so, he said it certainly rises to this criteria somewhat, but, it wasn't passing muster. He said that one common thread was the kind of independent help, in other words, folks could get independent help and in each category there are some things like the bridge club, or card games, but there are many that are a higher test, at least weekly potluck dinners or more personal services or in-care facilities at the home, within the house, versus the

outside kind of maintenance. He said that when he looked at what is offered compared to this Federal, he said he didn't think it meets that bar. He said that what's offered doesn't match to each of these categories, so you kind of have to give a little license one way or another, it's not any sort of exact science.

Mr. Boucher said that he believed that Attorney Sokul summarized that in tab 10, and made his point about meeting those.

Mr. Currier said that if you look at tab 10, on the second page, the following services and programs will be provided, a) programs desired to provide a social life for residents. He said to him, that means D (1). He said paragraph B meets D (2), being the Federal paragraph that we just talked about. He said that C is D (3), but then we get down to D, recreational programs, and to him, that's D (1) again. He said on point E, the services designed to assist residents with the maintenance and upkeep of buildings and grounds, that element would be met, and kept up, but that doesn't apply to category 4, the homemaker services, that's the difference between outside the house and inside the house, so he said he was disagreeing with Attorney Sokul on that paragraph E. He said that for paragraph F, he said that meets D (11), but is in disagreement with G, H and I. He said for G, regularly scheduled meetings will be held about nutrition, back care, vision care, breast cancer, vision care, breast cancer, prostate cancer, all of that would be done, but that's lining up with getting back to D (6), category six, health needs, and the Federal regulations say emergency and preventative health care programs, meetings about back care, nutrition, breast cancer, and it goes on, monthly blood pressure checks, flu vaccine shots, which they'll meet, periodic vision or hearing tests, staff or volunteers to pick up food from social services, buddy system of residents to do errands, emergency telephone network staff or volunteers, medical doctor facilities located within two miles of the facility, health care equipment pool for resident use. He said in totality, while some of those elements are offered as Attorney Sokul states in G, he said he's not feeling in totality it's meeting up to the spirit and intent of what's needed for those physical needs. He said he's struggling with what's being offered to meet with these Federal guidelines to go over that bar.

Mr. Shaw said that is still out of the formerly expired regulations, so it's kind of the spirit and intent of meeting

what used to be required, but is not sure even if the Board can find arguments about the checklist and scoring what all worked out, if it really matters, because this is technically not applicable any longer anyhow.

Mrs. MacKay said that there's nothing new yet, so you still have to use what's there.

Mr. Shaw said specific, there's other regs, they're way less specific about what needs to be done, so he said that brings him back to where should we really just be utilizing what we have codified in our Land Use Code.

Mr. Currier said that brings him in full circle also, because he agrees with Mr. Shaw in that he's spent time looking at what the State says, which relies heavily on what the Federal said, which is now expired, and looked back to the plain old six categories that we have, and they can be argued that they're more specific than State regulations, and then got more comfortable with those seven criteria, which the applicant is contesting right from the get-go. He said that he's relieved, he said he's never really dug into this before, but what it appears, he said he thought he'd find, is read with that criteria, we, being the City of Nashua, which was by somehow, like really different or out of line, and said he didn't think that was the case, he said that our State and expired Federal, they're getting at the same thing, and we do a pretty good job of articulating that in our book. He said he thinks we focus on our own Code book versus other criteria.

Mr. Shaw said that if we really address if there's agreement that the judgement under the seven categories, at least four of us already said that only one is potentially applicable, and then we zeroed in two statements, for the elderly or other persons who do not desire to live independently, the care typically includes room and board, supervision, assistance with daily living, such as housekeeping services. He said that to him, right now, the whole question pivots on that, and said he's with Mrs. MacKay in terms of not seeing that being met, and that this doesn't qualify as elderly housing as proposed.

Mr. Currier said that what our Code book used to say before it was revised in '07, and there was an additional category that was removed, under elderly housing classifications, it says that there is a congregate living services, assisted living services,

all of those seven are exactly the same, but there's another one, retirement housing services, these establishments offer minimum convenience services, but focus on attracting elderly residents, so as to provide a social support system among the residents. He said that is not in our Code, but it was in our Code, and thought it was interesting to see where we came from to wonder what the intent was, and the fact that that was dropped, he feels, was the effort to kind of raise the bar for more significant services provided.

Mrs. MacKay said that it's right, she thinks they raised the bar, they said it needs to be more, to be elderly housing, and generally it does.

Ms. Vitale said she went back to the appeal, where it provides significant facilities and services, designed to meet the physical and social needs of older persons, and put that thought into what is proposed, and the key word is the significant part, and then thought about all the services and physical needs and social needs, and said she doesn't see it. She said what's laid out and what is being shown as the buildings and layout and how they would function, the totalness of it, she said she doesn't see it.

Mr. Boucher said that if we look at those six items that we've been focusing on, without looking at what's around it, he had a difficulty with that. He said he keeps going back to the first paragraph in Section 190-42, he said that we all have an interpretation of what that says, in looking at it from his responsibility in the appeal, he looked back and determined what he is looking at. He said that we're looking at the spirit of the ordinance in a variance request. He said he's looked at the Office of Energy and Planning in interpreting the ordinance, and for an appeal, it says that the Board must confine its review to the language in the ordinance. He said he looked at the Federal law, and the State regulations, and that seems to be way looser, maybe because it's more broad. He said he's reviewed the first paragraph, and he said he's made a connection to how this is applicable to this case, and what's confusing about this is the last category we were talking about, elderly persons who do not desire to live independently, he said he went back to that paragraph 4, and is trying to interpret this ordinance, and what it says is to look at the literal meaning of the ordinance, but is having difficulty with that. He said this is example that principal uses and structures that constitute elderly housing,

and it goes back to the table in Section 42-1, and is concerned that this is just another example. He said it states that it recommends housing for elder persons provide the diverse and special needs of this group, including an aids for meeting function rooms or recreation facilities attempting to foster the housing alternatives for older persons with supporting facilities and services. He said that if he looks at the definition of elderly housing and reads what is in the Office of Energy and Planning, to him, he feels it's applicable to this application. He said he's not comfortable saying in summary that some of these items are not applicable at all, but is not comfortable in saying this is specifically a yes or a no. He said he's looking at the whole ordinance and trying to understand what the writers were trying to do in this ordinance, what is the intent of the ordinance, and can agree with the administrative decision is on this.

Mr. Shaw said in Table 42-1, the skilled nursing services or nursing care facilities, that's classically describes a nursing home that many of us might have grown up with that concept, and that used to be the only kind, and there were very few kinds of elderly housing. He said that there are about a dozen or so bullets, some points that are being made after that, a few of them are statements about the intent, the intent is to foster the development of housing for older persons while detailing local planning standards and promoting consistency with land use policies and the Master Plan and the land use laws and regulations. He said another one is to regulate the intensity and mix of the different types of dwelling units required to meet the needs of these citizens so as to provide ample outdoor and livable space and to retain a sense of personal identity, intimacy, and human scale within the development. He said another one is that the intent is to review the bulk, height and spacing of buildings, and the traffic circulation and parking pattern within the development to ensure that the adequate light, air, privacy, landscaping, and open space for passive and active recreation are provided with the development, and then it goes on and talks about a little more about the City of Nashua finds and determines and declares that, and there are several statements about 55 and over persons, and the Master Plan recommendation that cites the increased need for elderly housing. He said he wanted to go back to the seven categories and perhaps because it flips pages on this printout, and if you go back to this category called homes for the elderly, the very first statement, is this U.S. industry comprises establishments

primarily engaged in providing residential and personal care services, so it's in the very first part of the description, then, the parenthetical statement says without on-site nursing care, and then it says for, and it says one or the other, he said it's interesting because it's not just residential, it's residential and personal care services is what is highlighted in that description.

Mr. Currier said he wants to go over this thoroughly, and go over all the points, and asked if there are any stones unturned here before we make a motion.

Mr. Currier said he feels in line that this does not meet that criteria, he focused on the homes for the elderly, the last one, and in aggregate, the elderly or other persons who do not desire to live independently, that is where the struggle is with this application, while there is some elements of this criteria that is met but in aggregate, it doesn't rise to the level. He said he feels that there are four of us that feel it does not meet it, and one that does, and that's why there is five of us here.

MOTION by Mr. Shaw on the appeal of the administrative decision as advertised that a proposed elderly housing development located at 122 Manchester Street will provide significant facilities and services designed to meet the physical and social needs of older persons.

Mr. Shaw said that the Board finds that the proposal does not meet the sufficient criteria to qualify as elderly housing, the Board considered the testimony from everything from the Federal, State and applicable local code, and in considerations for elderly housing developments such as Hayden Green and Stinson Park that in recent times were instituted as elderly housing, and questions about the applicability of this as well from the redevelopment or development perspective regarding the total number of units, but ultimately the Board's focus is with our Code, Section 190-42, under Section A, Applicability, specifically Table 42-1, the elderly housing classifications categories and definitions, the Board considered all seven categories that are listed and believes that there is only one that has some applicability, that is the seventh one entitled homes for the elderly, but on closer inspection, and consideration, the description that the, quote from the Code, establishments primarily engaged in providing residential and personal care services, i.e. without on-site nursing care

facilities, for the elderly or other persons who do not desire to live independently, and the care typically includes room, board, supervision and assistance in daily living such as housekeeping services, and the Board, in reviewing what has been proposed believes that while there are some services and some offerings that will be provided, very little of this is elderly specific and might be found in any sort of a multi-unit type of facility that caters to a group of people, but specifically, that addressing the independent living but also providing care is simply not met with the proposal that the applicant originally made.

Mr. Shaw said that he moves that the administrative decision was incorrect and that this is not qualifying as elderly housing.

SECONDED by Mr. Currier.

Mr. Currier said that he has greatest respect for Mr. Falk and Corporation Counsel, and this wasn't easy to overrule that, because those two are very experienced, but is feeling that this case, he is overruling it and is not taking this action lightly, and doesn't happen often.

Mr. Shaw sentimented too, and staff does a lot of in-depth work, there was a lot of scrutiny and testimony, and it wasn't easy to get to this decision.

Mrs. MacKay concurred.

MOTION CARRIED 4-1. (Mr. Boucher).

MISCELLANEOUS:

REGIONAL IMPACT:

The Board determined that there are no cases that involve regional impact.

MINUTES:

January 10, 2017:

MOTION by Mr. Currier to approve the minutes as presented, waive the reading, and place the minutes in the file.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

January 24, 2017:

Mr. Shaw said on page 29, it says Mr. Shaw said in all his time on the Board, he said what he was trying to say is basically that he never felt before that we needed to really necessarily consider obtaining legal counsel, so, he was trying to say that this is the first time that he felt the need to consider that, and that was the main intent of that point.

Mr. Falk asked if staff can revise the statement, email it to Mr. Shaw, and he'll forward it to everyone else.

MOTION by Mr. Currier to approve the minutes with the amendment as mentioned by Mr. Shaw, and Mr. Falk will make the amendment as so noted, waive the reading, and place the minutes in the file.

SECONDED by Mr. Shaw.

MOTION CARRIED UNANIMOUSLY 5-0.

BY-LAWS:

Mr. Falk said that there was a discussion on the By-Laws two meetings ago, and staff made some revisions as the Board suggested. Mr. Falk said he'd forward a legislative draft for the Board to review.

ADJOURNMENT:

Mr. Currier called the meeting closed at 9:20 p.m.

Submitted by: Mrs. MacKay, Clerk.

CF - Taped Hearing